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ABSTRACT

The system of school finance equity in Texas is described as it existed before the court case Edgewood Independent School District (ISD) v. Kirby, and the overhaul mandated by legal rulings in the evolving Edgewood case is reviewed. In Texas, as elsewhere, the system of school finance has historically been based on the local property taxes collected at the district level. In Texas, these funds have been supplemented by state Foundation School Program funds. In fact, wealthy districts have been able to raise more money and to avoid caps on their spending. In 1987, the District Court held in "Edgewood" that the Texas system was unconstitutional in that it denied children in poor districts the equal protection of the laws and failed to provide an efficient educational system. This decision was overruled in the Texas Appeals Court, a decision subsequently reversed by the Texas Supreme Court, which reaffirmed that the state system was not constitutional. Since 1990 both the legislature and the plaintiffs have proposed new funding plans. The discussion surrounding these proposals is reviewed, with attention to issues of equity and school consolidation. The state school finance law is being rewritten in 1993, with current economic concerns added to those already identified for educational equity. (SLD)

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EFFICIENCY, EQUITY, AND LOCAL CONTROL—SCHOOL FINANCE IN TEXAS

Background

Efforts to equalize funds available to students in different school districts in Texas go back some 70 years. The current struggle for financial equity began in 1968 when a sheet-metal worker, Demetrio Rodriguez, became head plaintiff for parents in a poor district in San Antonio. In *Rodriguez v. San Antonio Independent School District (ISD)*, the U.S. District Court found that the state's method of school finance, which relied heavily on local wealth, discriminated against children living in poor school districts, and was therefore unconstitutional. Although in 1973, the U.S. Supreme Court reversed the lower court's findings in *Rodriguez*, holding the state system of finance to be constitutional, many Texans gained a new awareness of inequalities in their system. Thus, the struggle for equalization of funding continues today, as the Texas Legislature works to respond to *Edgewood ISD v. Kirby*, an equity suit now in the State Supreme Court.

Despite strides towards equity both before and since *Rodriguez*, differences in per pupil spending in Texas remain extremely high (Verhovek, 1993). To be sure, some of the highest spending districts are in remote areas, where an oil well easily supports the excesses of a teacher, a bus, and a school building for half a dozen students (B. Walker, personal communication, January 1993). However, other high spending districts are in wealthy urban and suburban neighborhoods, often right next to poor districts (Kozol, 1992).

The legal rulings in the evolving case of *Edgewood ISD v. Kirby*, which mandate far-reaching remedies and an extensive overhaul of the existing system, are generally considered among the most significant in the nation. To make the Texas experience useful to educators in other states, this digest summarizes the system of school finance in Texas before *Edgewood*, and then briefly describes the evolution of the lawsuit, focusing on key school finance principles treated by *Edgewood* and on the legislation that has attempted to produce a constitutionally acceptable state finance plan. A final section suggests some social and economic issues that are influencing the solutions to school finance in Texas as well as in other states.

Current School Finance in Texas

In Texas, as elsewhere, the system of school finance has been based on local property taxes collected at the district level. Although the state has historically augmented local money, until 1949 state funds were largely allocated on a per pupil basis, not by district needs. That is, the state only minimally equalized disparities in funding capabilities among districts. However, using a structure similar to that developed in other states, since 1949 Texas has partially compensated for wide district disparities through a Foundation School Program. Put simply, the Foundation School Program guarantees that every district, regardless of its tax revenues, has available a set amount considered necessary for a minimum education per student.

In reality, however, the funding guaranteed by the Foundation School Program has been far below the cost of providing students with even "the basics" (Walker, 1990). Thus, in 1989, in response to the *Edgewood* suit, the state both increased the Foundation School Program and created a second tier of support. In this second tier, the Guaranteed Yield Program, the state guarantees a dollar amount per student per penny raised in taxes between the required first tier and a tax limit set by the Legislature. In both the first and second tiers, the state weights per pupil costs to account for students who require larger expenditures in order to be educated successfully. Nevertheless, the second tier does not eliminate inequities, because poor districts simply cannot raise as much money as the wealthier districts. Further, the main source of inequality among districts has been caused by the capacity of wealthy districts to take advantage of a third tier of "unequalized enrichment." Districts that can reach this level of funding receive no additional aid from the state but also have no caps on what they can raise from taxes or spend on their students (Bullock, 1990; Levine, 1991; Walker, 1990).

The *Edgewood ISD v. Kirby* Case

The Texas District Court

In 1987, the District Court held in *Edgewood* that Texas's system of school finance was unconstitutional on two grounds. First, it denied children in poor districts "the equal protection of the laws, equality under the laws, and immunities guaranteed by the Texas Constitution" (cited in Walker, 1990, p. 7-8). Second, it failed to provide an "efficient" educational system, as required by the State Constitution.

This criticism of the school system as "inefficient" was based on the Texas Constitution which, like that of most other states, provides that, since "a general diffusion of knowledge" is "essential" to Texas, it is the duty of the State Legislature to provide "for the support and maintenance of an efficient system of public free schools" (cited in Walker & Thompson, 1990, p. 417). In *Edgewood*, "efficiency" was interpreted to mean both the proper distribution of money

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to secure the best education and the conservation of educational resources (Walker, 1991). A critical source of inefficiency, as delineated by the Court, was that district boundaries created areas of highly unequal property wealth.

The Texas Appeals Court

In 1989, the District Court judgment was reversed by the Texas Appeals Court, which stated that, while the existing system should not be considered "desirable," or not in need of change, education is not a fundamental constitutional right and wealth is not a "suspect classification." In fact, the Appeals Court found the state's use of local property taxes to finance education a "rational" means to advance local control of the schools (Sparkman & Campbell, 1991).

The Texas Supreme Court

Later in 1989, the Texas Supreme Court unanimously reversed the Appeals Court, reaffirming the District Court's decision that the state's school funding system was unconstitutional (Sharp, 1992; Walker, 1990). Nevertheless, the Supreme Court made important modifications in the lower court decision. First, the Supreme Court did not consider the issue of whether the finance system violated the "equal protection" provision in the Constitution. Instead, its opinion was made entirely on the "efficiency" clause. However, the Court went to some length to show that an inequitable system is inherently "inefficient," and particularly that the concentration of resources in property-rich districts that tax at a low rate is inefficient (Walker, 1989; 1990). That is, a system is inefficient when property-poor districts end up with fewer educational resources despite higher levels of taxation. In an efficient system, districts would experience a direct and close connection between their level of taxation and the educational resources available to them.

In contrast to the Appeals Court, the Supreme Court also pointed out that an efficient system "does not preclude the ability of communities to exercise local control over the education of their children" (cited in Walker, 1990, p. 10). Finally, the Supreme Court held for adequate state support, pointing out that state aid to the Foundation School Program did not cover mandated minimum requirements, and that the state did not help with debt service that consumed a larger proportion of funds in poorer districts than in wealthier ones (Walker, 1990; Walker & Casey, 1992).

Since 1990, both the Texas Legislature and the plaintiffs have sent the courts several new plans. However, in successive versions of *Edgewood* the courts have continued to hold that the proposed systems of school finance are unconstitutional. For example, while the Texas District Court allowed that it is impossible to create a system that is 100 percent equal in finance, when the 1990 State Legislature proposed a system that would have excluded the wealthiest districts from the equalization formula, the Court rejected it (Hobby & Walker, 1991). Thus, a new version of *Edgewood* was created with a much stricter standard for district equalization. In any case, a deadline for an acceptable plan has now been set for June 1, 1993, after which, should the Legislature fail to act, Texans will be left without state financing for their schools.

As the Texas case makes clear, the issue of equality in school finance can be evaluated from two standpoints: whether there is equity for students, and whether there is equity for taxpayers. The following sections show how these two issues have been tackled in Texas.

Funding Levels and Equal Educational Opportunity for Students

There has been a good deal of controversy in the past decade about whether more money for schools results in higher student achievement. Not surprisingly, educators in districts with great property wealth traditionally argue that money is relatively unimportant to the success of their students. At the same time, those from poorer districts are quick to point out the many material disadvantages in their schools—and to ask why, if money doesn't make a difference, the wealthy districts are so reluctant to share their resources (Cardenas, 1992). In its *Edgewood* decision, the Texas Supreme Court argued that the money available for any student has a "real and meaningful impact on educational opportunity" and that the educational responsibility of the state "is the same for all citizens, regardless of where they live" (cited in Walker, 1989).

Within this broad notion of equal educational opportunity for students, there are two quite different theoretical approaches to measuring fiscal equity. From one point of view, perfect equality among students can only be achieved when the combined revenues from the state and local sources produce exactly the same amount of money per pupil. Technically, this is called *horizontal pupil equity*. The issue of inequities in district spending per pupil was addressed by a court in *Edgewood* in its description of a variety of deprivations suffered by students in property poor districts: lack of up-to-date curriculum and technology, high student-teacher ratios, etc.

From another point of view, perfect equality can only be achieved when available revenue is distributed to create "unequal treatment of unequals." That is, districts and students with greater needs should have greater resources. Technically, this is referred to as *vertical pupil equity*. The Texas Supreme Court also addressed this concept in *Edgewood*, asserting that, in creating equity, the state can "weight" both districts and students, giving more funds to districts that are more expensive to run, such as certain big city districts; or to students who are more expensive to educate, because they require vocational, compensatory, remedial, and other special education programs (Levine, 1991; Walker, 1989).

Taxpayer Equity or Fiscal Neutrality

A second major way of evaluating fiscal equity in education considers not what students receive, but how heavily the tax burden rests on residents of different communities. In 1985-86, the wealthiest district in Texas had over $14,000,000 of assessed valuation per child, while the poorest district had only $20,000—a ratio of 700 to 1. Even in the 100 wealthiest districts, property wealth is 20 times greater than in the 100 poorest districts. And in the two neighboring San Antonio districts mentioned previously, per pupil wealth in Edgewood is $39,000, compared to $570,000 in Alamo Heights (Cardenas, 1992; Sparkman & Campbell, 1991). Because of the vast differences in property values, wealthy districts have characteristically raised much more

for their students' education even while taxing themselves at a far lower rate. For example, because Alamo Heights, one of the 12 school districts in San Antonio, has so much property wealth, its residents pay taxes at the lowest rate in the county and still generate the highest revenue of any of the San Antonio school districts (Cardenas, 1992).

In *Rodriguez* and again in *Edgewood*, the Federal District Court ruled that state subsidies should ensure substantially equal results for equal levels of taxation. Commonly referred to as *fiscal neutrality*, this does not require equal expenditures by districts in a state, but only an "equal opportunity to generate equal revenues at a given level of tax effort" (Walker & Casey, 1992, p. 88). Property-poor districts should not have to tax themselves at far higher rates than property-rich districts in order to gain the same level of resources (Sharp, 1992; Walker & Casey, 1992).

The court in *Edgewood* also addressed the issue of equal taxation for taxpayers with an equal ability to pay, or what is technically known as *horizontal tax equity*. For example, in Texas as elsewhere, the tax burden on a $100,000 home can vary greatly across districts, with some areas being "tax havens" for those with substantial taxable property. If the tax havens were eliminated, so that a $100,000 home in all districts in Texas was taxed at substantially the same rate, the tax burden would begin to be equalized and additional resources could be generated.

Narrowing Funding Differences Through Redistricting

Texas is divided into 1,058 school districts—among the most of any state. This large number of districts results in part from the state's large size, but many districts have extremely small enrollments, and over 700 have fewer than 1,600 students. While some of these small districts are caused by a low concentration of students spread over a wide area, not all are. In contrast to most states, which do not encourage small districts, Texas gives these districts special financial assistance to compensate for the diseconomies of scale (Cardenas, 1992). Still, as in other states, small district size has also tended to reinforce financial disparities, since district lines often conform to the boundaries of neighborhoods of greatly varied wealth. In fact, among school finance experts, it is an axiom that consolidation leads to greater equalization (Walker & Casey, 1992).

Yet local control of schools has been "sacrosanct" in Texas, and there has been a great deal of opposition to district consolidation (Walker & Casey, 1992). For example, when the 1991 State Legislature attempted to neutralize district wealth by creating 188 special purpose districts (157 county-wide, and 31 multiple-county) whose only function would be to collect and distribute taxes, there was widespread apprehension among school districts that with consolidation for equity purposes, consolidation for operational purposes would not be far behind. Moreover, the media often fueled fears further by referring to the new districting as the "Robin Hood plan" (Cardenas, 1992). Finally, the tax mechanism of these special county education districts was struck down by the Texas Supreme Court, which declared that they "illegally constituted a statewide property tax not approved by the voters" (Sharp, 1992, p. 13).

Strategies to Equalize Resources among Districts

During the past years of controversy, wealthy districts in Texas have often argued that poorer districts should be "leveled up" to their standard of spending. Yet the per annum cost of bringing all school systems in Texas to the level of the highest spending district would be approximately four times the annual operating budget of the entire state government (Levine, 1991). Moreover, in the past each attempt by the Legislature to narrow disparities among districts by infusions of state funds has been followed by increased expenditures by wealthy districts—and increased disparities in resources among districts (Cardenas, 1992). Still, it has been argued that the vast discrepancies in wealth among school districts could be reduced if oil, gas, and minerals were not taxed as part of the local property tax but rather taxed by the state. There is, however, much popular resistance to such a change. Moreover, in order to create a state tax on assessed property, a constitutional amendment would be required (Sparkman & Campbell, 1991).

Short of rethinking what sorts of property should be taxed to generate local as opposed to state income, or bringing the spending of poor districts up to that of wealthy districts, several other strategies have been suggested to equalize funding. The first is generally referred to as setting spending "caps." Although the Texas Supreme Court in *Edgewood* did not suggest any spending caps for high wealth districts, in 1991 the Texas Legislature enacted into law two types of caps: a limit on local tax rates, which would set a ceiling for the rate at which property can be taxed; and a freeze on local and state spending when disparities among school districts reach a certain level. In theory, the tax rate cap has the capacity to create equality in rates of taxation over several decades, as low tax districts gradually build up to the rates of high tax districts. However, while the freeze on spending would prevent increases in disparities among districts, the disparities would remain at a very high level (Cardenas, 1992; B. Walker, personal communication, January 1993).

Another strategy proposed by the Legislature in response to *Edgewood*, the aforementioned "Robin Hood" technique, would have attempted to "recapture" funds from wealthy districts to use on a regional basis. That is, to ensure that all districts net equal revenue, the state would give make up the difference in revenue for poor districts and take locally raised funds away from wealthy districts that raise too much money. However, the Texas Supreme Court decided that "recapture" is prohibited by the State Constitution, which allows taxes collected in a district to be used only by residents of that district.

In response to this decision, in February 1993, the State Legislature voted for a constitutional amendment to allow the Legislature to shift a relatively small amount (2.75 percent of all state and local revenue from districts with high property wealth) to poor districts. This constitutional amendment will go before the voters in a May 1 election (Verhovek, 1993). Although redistribution is unlikely to be popular with voters, the threat of either district consolidation or school closing may make it the better alternative for the majority of voters.

Obstacles to Equity in Texas School Finance

Several factors common to public schooling across the country have made it difficult to redress inequities in the school finance system in Texas. Most important, the 1980s was a period of economic recession for the state, with static or declining revenues from oil, natural gas, real estate, and general state sales taxes. As a result, either the school finance system had to remain much the same or state taxes had to be raised. At the same time, Texas was experiencing a 20 percent increase in the number of school children, with Hispanic students comprising the largest, and African American students the second largest, increase. Moreover, a similar growth in the number of students, largely caused by minority population growth, has been projected for the 1990s. Thus, an aging white population with fewer children has seen itself as paying for a growing minority population. Since this white group constitutes the bulk of voters, support for fiscal equity has involved political risks (Sparkman & Campbell, 1991).

Although 80 percent of the new jobs in Texas will require a high school education, minority dropout rates will continue to be high, and achievement low, compared to that of white students. Low achievement and high dropout rates have many causes, including the lack of resources in poorer districts. It is ironic, then, that the continuing disparities in the achievement and graduation rates of white and Hispanic students may also make some white voters wonder whether their money for schooling is being well spent (Sparkman & Campbell, 1991).

Finally, in 1993 the state school finance law is being written amidst pressure for spending in other areas like social services, corrections, and health care. As Sharp points out, "School finance arguments are even harder to resolve in times of tight budgets" (1992, p. 13). At the same time, it is extremely difficult to gain support for new revenue sources such as personal and corporate income taxes (Walker, 1989). Not surprisingly, few see an easy end to the protracted school finance litigation in Texas.

— **Carol Ascher**

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